

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

FOND DU LAC SUPERMARKET,
and JAMAL A. ZANOUN,

Plaintiffs,

v.

Case No. 19-cv-459-pp

UNITED STATES OF AMERICA,

Defendant.

**ORDER DISMISSING CASE FOR FAILURE TO SERVE THE COMPLAINT
UNDER FED. R. CIV. P. 4(m), AND FOR FAILURE TO DILIGENTLY PURSUE
THE CASE UNDER CIVIL L.R. 41**

On March 29, 2019, the plaintiffs—who are represented by counsel—filed a three-paragraph complaint seeking judicial review of a final agency decision of the U.S. Department of Agriculture Food Nutrition Service. Dkt. No. 1. The plaintiffs did not file a certificate of service showing that they had served the defendant, nor did they request a summons. On August 13, 2019, four and a half months after the plaintiffs filed the complaint, the court issued an order to show cause, directing the plaintiffs to show cause by the end of the day on September 6, 2019 why they had not served the complaint. Dkt. No. 2 at 2.

The plaintiffs did not show cause by September 6, 2019. The court has had no communication from the plaintiffs at all since they filed the complaint on March 29, 2019. They have not asked for a summons, filed their Civil Local Rule 7.1 (E.D. Wis.) disclosure or filed their magistrate consent form. Under Federal Rule of Civil Procedure 4(m), the deadline for the plaintiffs to have

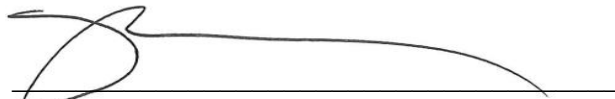
served the complaint was June 27, 2019, and the court has no evidence that they served within that deadline. They have not asked for additional time to serve the complaint.

Rule 4(m) requires the court to dismiss the case without prejudice if the plaintiff does not timely serve the complaint. Civil L.R. 41(a) allows the court to dismiss the case without prejudice after giving notice to the attorney of record (which the court did in its August 13 order). Civil L.R. 41(c) allows the court to dismiss a case if it appears to the court that the plaintiff is not diligently prosecuting it.

Under Fed. R. Civ. P. 4(m) and Civil L.R. 41, the court **ORDERS** that this case is **DISMISSED WITHOUT PREJUDICE**.

Dated in Milwaukee, Wisconsin this 9th day of September, 2019.

BY THE COURT:

A handwritten signature in black ink, appearing to be 'P. Pepper', written over a horizontal line.

HON. PAMELA PEPPER
United States District Judge